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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,489	01/09/2002	Thomas Lee Seitz	AUS920010992US1	6075

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EXAMINER

BORISSOV, IGOR N

ART UNIT PAPER NUMBER

3629

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,489

Applicant(s)

Thomas Lee Seitz

Examiner

Igor Borissov

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed method for estimating service oriented labor costs does not recite a limitation in the technological arts. The independently claimed steps of: *receiving a request from a requestor; identifying one or more resources and one or more service levels corresponding to the request; calculating a labor rate by service level; generating a response corresponding to the calculation and sending a response to the requestor* are abstract ideas which can be performed mentally without interaction of a physical structure. Said method steps may be understood as merely inquiring about service charges over the telephone. However, the claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d 1665, 1671 (Bd. Pat. App. & Inter. 2001)).

Because the independently claimed invention is directed to an abstract idea which does not recite a limitation in the technological arts, those claims and claims depending from them, are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

Art Unit: 3629

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6-8, 13-14 and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Cooney et al. (US 2002/0023060).

Cooney et al. (hereinafter Cooney) teaches a compute-implemented method and system for determining charges for a service, comprising:

Claims 1, 8 and 14. In response to a quote request, identifying one or more resources and one or more service levels corresponding to the request; calculating and providing a labor rate in accordance with service level [0014]; [0082]-[0084].

Claims 6, 13 and 19. Determining a labor rate based on the comparison a standard labor rate with the labor rate by service level [0082]-[0084].

Claims 7 and 20. See claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooney in view of Fad et al. (US 5,793,632).

Claims 2, 9 and 15. Cooney teaches all the limitations of claims 2, 9 and 15, except teaching inputting an overtime parameters for calculating charges for a service.

Art Unit: 3629

Fad et al. (hereinafter Fad) teaches a computer-implemented cost estimating method and system, wherein input parameters for calculating costs includes overtime rates (C. 3, L. 30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cooney to include overtime rates as an input parameter for calculating charges for a service, as disclosed in Fad, because it would increase accuracy of the system, thereby make it more attractive to customers.

Claims 3-4, 10-11 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooney and Fad.

Claims 3-4, 10-11 and 16-17. Cooney and Fad teach all the limitations of claims 3-4, 10-11 and 16-17, including inputting an overtime parameters, service level and labor rates for calculating charges for a service (See claim 2).

Cooney and Fad do not specifically teach calculating a utilization index and overtime index.

However, calculations of the utilization index and overtime index represent mere manipulation of statistical data, and, therefore, utilization of said indexes for calculating charges for a service appear to be an obvious matter of business choice.

Claims 5, 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooney.

Claims 5, 12 and 18. Cooney teaches all the limitations of claims 5, 12 and 18, except specifically teaching determining whether the resource is *available*.

Official notice is taken that it is well known that businesses charge for the services *available* for utilization.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cooney to include determining whether the

Art Unit: 3629

resource is available, because charging for the resource which is not available would cause losing clients.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

The best foreign prior art located by the examiner:

WO 03/003265 A1 to Mintz; disclosing method and system for cost analysis and benchmarking in the healthcare industry.

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308- 2702.

Any response to this action should be mailed to:

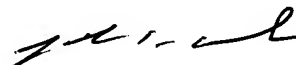
Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

(703) 872-9306 [Official communications; including After Final
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.



JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600